

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION,
PRETORIA**

CASE NO: 088262/2023

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
<u>09 January 2025</u> DATE	 SIGNATURE

In matter between

PLATINUM PARK 1 HOMEOWNERS ASSOCIATION NPC

Applicant

and

NALEDI PERTUNIA MOKOENA

First Respondent

TIISETSO WILLIAM MOKOENA

Second Respondent

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties /their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date for hand-down is deemed to be 09 January 2025

JUDGMENT

LESUFI AJ

- [1] The applicant brought an application to have the respondents' estate provisionally sequestered, averring that the latter's levies towards the association were in arrears. The parties' oral arguments were only limited to the issue regarding the late filing of the respondents' answering affidavit after this court directed them to answer in its order dated 27 January 2024.
- [2] Before I could consider condonation application arguments in order to prepare and write this judgment, I had to read the papers so as to satisfy myself that it would be in the interest of justice to grant the provisional order solely on the basis of noncompliance with the Rules of this Court.
- [3] Having heard the arguments presented by both parties and read the parties' papers, I identified very compelling and concerning aspects which required this court's intervention to deal with the parties' issues once and for all.
- [4] I found that the notice of motion was filed on 1 September 2023.¹ The founding affidavit was deposed by one Mr. Johny Khwele who, according to the voluminous papers I read, was one of the directors elected by the homeowners more than five years before this application was made. A draft order was made by this court on 26 January 2024, directing both parties to act in terms thereof.² On page 14-38-14-57 of the caseline, I found a Community Scheme Ombud Services(CSOS) adjudication order dated 17 April 2022, which directed the board of directors whose legitimacy to govern was challenged by some homeowners to convene an Annual General Meeting(AGM) after an auditor has finalized the association's audited financial statements.
- [5] It is clear from the papers I read that the applicant is one of the people who alleged that he diverted the payment of his monthly levies to an Attorney's Trust account until all governance issues have been dealt with.
- [6] The deponent to this affidavit approached this court for a provisional sequestration order on 1 September 2023 fully aware of the CSOS order but failed to disclose its existence to this court and why the provisional order was

¹ Page 01-1-01-36 ²
08-1-08-4.

sought before compliance with the CSOS order. Clearly when this court granted the draft order on 26 January 2024, the CSOS order was not brought to its attention for it to exercise a judicial discretion on whether it was in the interest of justice to make such an order when there were clear pending issues related not only to the governance of the association but also to clear audited financial statements of the association.

- [7] The latter was very important to assist the court in determining whether a prima facie case of indebtedness was made before even directing the applicant to file any answering affidavit. The CSOS order, as I read, seeks to have all the association's governance and financial matters corrected by a board of directors elected in terms of its own constitution. This court cannot allow any party to approach it for this kind of relief when such a party is aware of pending issues that have the potential to resolve the complaint of any form of indebtedness towards the association.
- [8] It is also clear from the papers that contempt of this court's application was served on the board of directors for its failure to comply with the CSOS order and that such order was according to the papers, still pending before this court. The deponent to the founding affidavit failed to disclose this important developments to this court when filing the sequestration application. These non-disclosures clearly had the effect of prompting this court to grant the draft order of the applicant as it believed that the information provided by the applicant was the only information known to the applicant for the court to consider and to the extent of directing the respondents to answer the allegations made in the sequestration application.
- [9] Instead, what the applicant's counsel did during the hearing was simply argue that I must grant the draft order he presented because the respondents failed to explain the reasons the answering affidavit was filed late. I was tempted to grant the order until I satisfied myself that such would not have been in the interests of justice given all these non-disclosures on the part of the applicant.

[10] Property ownership is one of the most valuable assets and right protected by this country's Constitution and for any court to assist a third party to deprive another party of that right, this court must be satisfied that it is the only remedy available to the aggrieved party. Put differently it is an intervention of the last resort.

[11] The applicants in this case are not innocent litigants on the association's financial matters because they have, according to these papers, still failed to comply with the CSOS order and it is approximately more than two years since it was issued by the Adjudicator.

[12] Since the parties have not argued the preliminary issues of jurisdiction and the applicant's *locus standi* raised by the applicant as the court only limited them to arguing condonation for the late filing of the answering affidavit, I am not going to make any determination on the two points of law, including Rule 7(1). I am equally not going to make any order on the issue of the respondents' condonation application or lack thereof. I am not going to endorse the draft order handed by the applicants either.

[13] This court, when making the order on 26 January 2024, was not provided with full details of the board of directors' governance status, no audited financial statements as ordered by CSOS against the applicants, in order to assist this court in clearly determining the extent of the respondents' indebtedness. The order made by this court on 26 January 2024 was erroneously granted in the absence of the affected party and further that there was an omission. This court has inherent powers to make judicial decisions which promote the interests of justice against always fixating itself to penalizing parties because of slight non-compliance with its Rules.

[14] It is for these reasons that I make the following order

14.1 This application is struck off the roll subject to the following condition:

14.1.1 The applicants or their successors must prove to the court that they have complied with the CSOS order and that the

respondents' indebtedness was determined by CSOS before reinstating this application before this court for consideration.

14.2 No order as to costs.



B LESUFI
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES

For the Applicant

Adv. Z Schoeman instructed by

For the Respondent

Kleynhans & Swanepoel Inc.
Nkosi SP Inc. Attorneys

Date of hearing

21 October 2024

Date of Judgment

09 January 2025